

Moreover, in para. 710 of its findings, TBF cites Stereo Broadcasters, Inc., 87 FCC 2d 87, 103 (1981) for the proposition that:

Reliance on counsel will not save an applicant from disqualification where "the average person could readily appreciate the spuriousness" of the document counsel had prepared.

See also RKO General, Inc. v. FCC, 670 F.2d 215, 231 (D.C. Cir. 1981); WADECO, Inc. v. FCC, 628 F.2d 122, 128 (DC Cir. 1980); Las Americas Communications, Inc., 6 FCC Rcd 1507, 1510 (para. 21) (1991); and Ponchartrain Broadcasting Company, Inc., 7 FCC Rcd 3264 (Rev. Bd. 1992). Clearly, Paul Crouch is an experienced broadcaster and sophisticated in the business and management aspects of his ministry. Especially in light of his recognition at Tr. 2674 of the need to make full disclosure to the Commission as the only means of ensuring compliance with the Commission's Rules, there is little basis for excusing noncompliance based on a plea that he blindly relied upon advice of counsel.

84. Initially, Paul Crouch should have known that reliance on counsel is not an assurance of compliance with Commission requirements by virtue of his experience in the International Panorama case, where Trinity Broadcasting Network narrowly avoided disqualification based on a false statement contained in an application. The false statement was initially made by an employee; however, Paul Crouch failed

to adequately review the application before he signed it. The situation was perpetuated because of a failure by counsel to ensure that the statement was corrected after he became aware of it. Counsel's failure contributed to his subsequent replacement by Colby May. TBF wholly fails to address the International Panorama case.

85. It would have been further unreasonable for Paul Crouch, who is a sophisticated and experienced businessman, to have blindly relied on the advice of Colby May. Colby May was a relatively inexperienced attorney who had only recently established his own practice based primarily on the patronage of Trinity Broadcasting Network. Prior thereto, he had represented Trinity Broadcasting Network as an employee of its former law firm. Because of his representation of Trinity Broadcasting Network, Colby May was not in a position to give disinterested advice to NMTV. Thus, there necessarily existed a compelling impetus to reach a result that would enable Trinity Broadcasting Network to accomplish its goal rather than to provide NMTV with independent counsel. Simply put, Colby May was acquiescent. A sophisticated individual such as Paul Crouch would not likely rely upon Colby May for such an important matter having a significant impact on Trinity Broadcasting Network.

86. TBF urges that Colby May's advice was premised on a careful reading of the Rule and the decision adopting it. In

fact, Colby May ignored Note 1 to the Rule, discussed above, made no study of Commission precedent, and never discussed the matter with any attorneys outside of his firm. Moreover, his advice was never reduced to writing. Glendale Findings, para. 62. Indeed, TBF is ultimately forced to justify Colby May's advice by citing his reliance on the interpretation of the Rule urged by a Commissioner who dissented to the adoption of the Rule. TBF Findings, para. 659. Obviously, no responsible counsel would rely upon the views expressed in a dissenting opinion as indicative of what the majority intended.⁹

87. The record also reflects that although Colby May purported to advise that the minority status of the NMTV directors was sufficient to justify the claim of the minority exception, he also advised Jane Duff that ". . . we needed to make things as separate as we could . . ." Tr. 1692 (emphasis added). This is inconsistent with the advice on which NMTV purportedly relied, and suggests that there was a clear recognition of the sham being perpetrated. Glendale Findings, para. 65.

88. The circumstances surrounding the retention of Tyrone Brown also reflects that Trinity Broadcasting Network

⁹ It is also pertinent to note that TBF's counsel in this proceeding has found it necessary to premise TBF's construction of the minority exception on the 1982 Advisory Committee Report (Note 1, supra). Colby May's testimony does not reflect that he was aware of this Report. TBF Exhibit No. 105, para. 22-25.

did not really want genuinely independent advice. Thus, after problems arose in the context of the Wilmington application, even E.V. Hill and Phillip Aguilar recognized the need for independent counsel. In implementing their concerns, however, Trinity Broadcasting Network proceeded to compromise Tyrone Brown's independence with the result that no advice was forthcoming and, indeed, Tyrone Brown promptly and mysteriously disappeared from the scene. Obviously, Trinity Broadcasting Network was well aware of what advice would be forthcoming from any independent counsel. It could not afford to hear such advice since that would undermine the linchpin of its case, i.e., its purported reliance on counsel. Accordingly, it took effective measures to ensure that no such advice was forthcoming from Tyrone Brown. Moreover, it never sought such advice from any other source, a solution that should have recommended itself as readily to Paul Crouch as it did to E.V. Hill and Phillip Aguilar.

B. The Position of the Mass Media Bureau

89. The Bureau preliminarily proposes conclusions adverse to Trinity Broadcasting Network on both of the qualifying issues specified against it.¹⁰ The Bureau

¹⁰ The Bureau proposes that it be concluded that no abuse of process resulted from NMTV's claim of low power minority preferences. This is without merit for the same reasons cited in connection with the similar proposal by TBF. In short, it is a posture expressly rejected by the HDO.

nonetheless proposes ultimately that the disqualification of TBF is not warranted. It instead proposes that forfeitures in the amount of \$250,000 each be imposed on Trinity Broadcasting Network and NMTV. It further proposes to reward TBF with a renewal expectancy resulting in the renewal of its license. Glendale generally concurs in the Bureau's proposed findings of fact and its preliminary conclusion that the facts reflect adversely on the qualifications of Trinity Broadcasting Network and its related entities. The Bureau's ultimate conclusions, however, are impossible to square with its findings of fact and preliminary conclusions. Moreover, it first finds that serious misconduct occurred and then proposes to impose a sanction that is nothing more than a slap on the wrist. The result proposed by TBF would not only fail to ensure future compliance by the parties involved but would send a message that the Commission will not seriously punish parties which abuse its policies in many services designed to foster minority ownership.

1. The Bureau's Ultimate Conclusions Dismissing Trinity Broadcasting Network's Misconduct As Minor Are Without Basis And Inconsistent With The Bureau's Own Preliminary Conclusions

a. The Hearing Designation Order

90. Initially, the Bureau's suggestion that forfeitures should be used in lieu of disqualification in this case is inconsistent with the Hearing Designation Order, FCC 93-148,

released April 7, 1993 in this proceeding (HDO). While Glendale does not dispute the Commission's authority to employ forfeitures as an alternate to disqualification, that is not what the Commission opted to do in the HDO. Thus, Issue (c) specified by the Commission in para. 48 of the HDO states:

(c) To determine, in light of the evidence adduced pursuant to issues (a) and (b), whether Trinity Broadcasting of Florida, Inc., is qualified to remain a Commission licensee.

(Emphasis added). The Commission later addresses the possibility of forfeitures in para. 52 of the HDO, stating that a determination in that respect shall be made:

. . . irrespective of whether the hearing record warrants an Order denying the renewal application for Station WHFT(TV) . . .

The Commission thus clearly recognized that the issues specified in the HDO involved serious misconduct that -- if proved -- would require TBF's disqualification. The issue of forfeitures would be reached as a possible additional sanction given the egregious nature of the misconduct, not as an alternate basis for resolving designated Issue (c).

b. The Unauthorized Transfer of Control Issue

91. On the merits, the Bureau initially separates the unauthorized transfer of control issue from the abuse of process issue. Bureau Findings, para. 308. It then disposes

of the control issue by observing that "[g]enerally" the Commission does not impose the sanction of disqualification based on an unauthorized transfer of control. The Bureau then reasons that in the absence of "aggravating circumstances", disqualification is not warranted. Even if this were the law, the Bureau is able to dispose of "aggravating circumstances" only by treating the abuse of process issue as a separate, virtually unrelated issue. In fact, Trinity Broadcasting Network's abuse of process and accompanying lack of candor arises from its unauthorized control of NMTV and clearly constitutes a circumstance that aggravates that misconduct.

92. There is in any event no basis for the Bureau's position that unauthorized transfers of control "generally" do not support disqualification. The Bureau cites George E. Cameron Jr. Communications, 56 RR2d 825 (1985). In that case, the Commission approved a settlement in the proceeding considered by the Review Board in George E. Cameron Jr. Communications, 91 FCC 2d 870 (Rev. Bd. 1983) (Cameron). The Board disqualified the applicant based in part on an unauthorized transfer of control. The Commission merely approved a settlement based on the unique facts of the case.¹¹

¹¹ The settlement resulted in the party which had assumed unauthorized control forfeiting one of the two stations at issue. The Commission also found that the party had incurred substantial expenses in connection with the matter (far in excess of the \$500,000 in forfeitures proposed here) and had not attempted to conceal his activities. Further, the settlement served to terminate

There is no basis for concluding that the Commission would have reached a different result from that reached by the Board had the case been resolved on the merits. The Bureau also cites Seven Hills, supra; however, the Board in that case concluded that disqualification would not be warranted based on the facts of that case, which are not the same as the facts here as discussed above. In addition to the absence of candor issues such as are involved here, the network in Seven Hills had no involvement in the licensee's operations. Moreover, the burden of proof in that case was on the parties accusing the licensee, whereas here the burden of proof is on TBF. The Bureau finally cites CanXus Broadcasting Corporation, 8 FCC Rcd 4323 (MMB 1993); however, that case was deemed to involve "minor" violations arising from "inadvertent mistakes" which is not comparable to the instant case.

93. As noted, disqualification was found warranted by the Board in Cameron for violations including an unauthorized transfer of control. Similarly, in Stereo Broadcasters, Inc., 55 FCC 2d 819, 49 RR 2d 1263 (1981), disqualification was

protracted litigation and resulted in the complete withdrawal from broadcasting of the original licensees who had permitted the unauthorized transfer of control. Here, the imposition of \$500,000 in forfeitures would not remotely approach the level of sanctions found in Cameron and would leave the wrongdoers still in broadcasting without any loss of license whatsoever. The Bureau's proposed sanction would amount to nothing more than a slap on the wrist in comparison to the cumulative sanctions that resulted from the Cameron settlement.

found to be warranted for violations including an unauthorized transfer of control. In The Trustees of the University of Pennsylvania, 69 FCC 2d 1394, 44 RR 2d 747 (1978), the Commission premised disqualification on an abdication of control by the licensee. Moreover, if a licensee could not be disqualified solely for an unauthorized transfer of control, it would have been futile to specify the de facto control issue that was specified in the HDO. That the Commission did specify such an issue indicates that it viewed the misconduct alleged against TBF and its related entities very seriously. Indeed, such misconduct threatens the viability of the Commission's policies designed to promote minority ownership.

In order to avoid disqualification from an adverse resolution of the issue, it would be clearly incumbent upon TBF to prove substantial mitigating circumstances, not merely the absence of aggravating circumstances.

94. Finally, if there were any requirement that aggravating circumstances be shown, such circumstances exist if only because Trinity Broadcasting Network has never acknowledged any wrongdoing or made any attempt to correct its past misconduct. Indeed, it has taken the position that it will not mend its ways unless the Commission first tells it what to do. It is clearly impossible to find a licensee qualified when it is in fact in continuing violation not merely of the Commission's Rules but of the Communications Act

of 1934, as amended, (the Act) and it has adopted a wholly unrepentant posture. The Bureau is rather proposing to reward a licensee for its defiance of the Commission. Such a result cannot be justified even without considering the further aggravation provided by the presence of abuse of process and lack of candor, which are considerations inextricably linked to -- not independent of (as the Bureau suggests) -- the control issue. Thus, the unauthorized control of NMTV and its concealment from the Commission were the means used by Trinity Broadcasting Network to accomplish its abuse of process. They cannot be properly assessed except as integral parts of one continuing course of conduct.

c. Abuse of Process and Lack of Candor

95. The Bureau initially premises its conclusion that Trinity Broadcasting Network's abuse of process should not be disqualifying on the assertion that:

Nevertheless, the evidence does not support a conclusion that Crouch, TBN, or NMTV intended to deceive the Commission.

Bureau Findings, para. 310. In fact, this proposition is patently inconsistent with other conclusions proposed by the Bureau itself.

96. In the paragraph immediately preceding the above language, the Bureau concludes that:

Each time, they created an impression that NMTV was minority-controlled when, in fact, it was not. Further, Crouch and TBN knew that NMTV was not controlled by the minorities on its board.

Bureau Findings, para. 309 (emphasis added). The creation of an impression that NMTV was minority controlled when it was known that this was false is the same as an intention to deceive the Commission.

97. At para. 289 of its findings, the Bureau properly dismisses Trinity Broadcasting Network's claim that Ben Miller was merely a consultant as "nothing more than a contrivance" that "cannot be credited." The distinction between a "contrivance that cannot be credited" and a "lack of candor" is not readily apparent.

98. At para 292 of its findings, the Bureau properly concludes that:

TTI/NMTV may have been recognized under state law to be a sovereign corporate entity because it had its own articles of incorporation and bylaws, but Crouch plainly regarded TTI/NMTV as an operating branch of TBN. That was Crouch's frame of mind; that is how TBN characterized TTI/NMTV to the public in its newsletters; and that is how, in practice, Crouch and others at TBN treated TTI/NMTV.

(Emphasis added). That is also diametrically the opposite of how NMTV has been represented in applications, pleadings and testimony submitted to the Commission from the beginning up to the present moment. It is impossible to square this fact with

the Bureau's later conclusion that there was no lack of candor.

99. At para. 297 of its Findings, the Bureau properly concludes that Paul Crouch and Trinity Broadcasting Network used NMTV to "evade" Commission requirements. Again, the distinction between an "evasion" and a "lack of candor" is not readily apparent.

100. At para. 302 of its findings, the Bureau properly concludes that:

Rather, TBN was NMTV. . . . The reality of the TBN and NMTV relationship was well known to Crouch, Duff, Juggert, and May. All must be charged with the knowledge that TBN had actual working control over NMTV.

(Emphasis in the original). That being the case, all must similarly be charged with willful deception in repeatedly representing to the contrary up to the present moment.

101. At para. 354-55 of its findings, the Bureau properly concludes that both NMTV and Trinity Broadcasting Network at all times knew that "NMTV was merely an operating division of TBN" but failed to disclose the facts concerning this relationship in applications filed with the Commission (or in any other context, until compelled to do so by two Commission inquiries). It is impossible to attribute such nondisclosure to anything other than an attempt to deceive the Commission.

102. The only explanation offered by the Bureau for its last-minute about face in para. 310 of its findings is that Trinity Broadcasting Network was proceeding with a "bizarre legal theory". The merits (or lack thereof) of TBF's reliance on counsel defense is discussed above. In brief, the record does not reflect that Trinity Broadcasting Network/NMTV in fact relied upon counsel or would have had any reasonable basis for doing so. Irrespective of the merits of the claimed reliance, however, there is no evidence that Trinity Broadcasting Network's legal theory ever extended to justifying repeated representations that NMTV was minority-controlled when this was known not to be the case. In point of fact, TBF continues to claim even in its instant findings that NMTV was in fact minority-controlled. Accordingly, it is still perpetuating its abuse of the Commission's processes and its candorlessness. Thus, the Bureau's posture excusing what is in fact an ongoing abuse of the Commission's processes and lack of candor cannot be squared with the Bureau's own proper conclusion that Trinity Broadcasting Network represented to the Commission (and still represents to the Commission) that NMTV was (and is) an independent entity when Trinity Broadcasting Network must be charged with knowledge that such was (and is) not true. The Bureau's logic amounts to adding one plus one and finding a sum of zero.

103. Bureau Findings, para. 310, also appears to conclude that Trinity Broadcasting Network cured its previous abusive posture when it disclosed its "bizarre legal theory" when compelled to do so by the objections to the NMTV Wilmington application. It is not readily apparent how such a forced disclosure would serve as a mitigating factor to the prior abuse. The Commission would never have learned of the disingenuous legal basis for NMTV's applications but for the fortuitous intervention of a third party. More fundamentally, however, Trinity Broadcasting Network failed to disclose the full facts necessary to evaluate its legal claim, either in its applications or in response to the Wilmington objections. Thus, as developed in Glendale Findings, para. 314-43, and as discussed above, Trinity Broadcasting Network pursued a consistent policy of non-disclosure and lack of candor that deprived the Commission of even the minimal facts necessary to make a preliminary assessment of Trinity Broadcasting Network's claims until after the second Commission request for additional information. Moreover, its policy of candorlessness has continued up to its present findings. The record amply documents that Trinity Broadcasting Network has consistently sought to deceive the Commission as to the true nature of its relationship with NMTV.

104. Ultimately, what the Commission needs to know from any applicant are all the facts pertinent to the relief being

sought. The applicant's legal theory is essentially irrelevant since if the Commission knows the facts it can make a proper decision as to whether the relief sought is warranted, irrespective of the applicant's own theories or motives. Thus, the underlying issue in this case is not that the Commission didn't know Trinity Broadcasting Network's "bizarre legal theory". Rather the issue is that the Commission did not know the facts. And the Commission did not know the facts because Trinity Broadcasting Network consistently sought to conceal them.

105. The Bureau would also accord some significance to the possibility that Trinity Broadcasting Network's misconduct may have been the product of "religious zeal". This is an irrelevant consideration. To excuse rule violations, abuse of process and lack of candor because of the existence of a religious motivation would breach the neutrality that the government must maintain in the area of religion. Moreover, the existence of a religious motivation for misconduct in no way resolves questions as to a licensee's future reliability. When a party deliberately assumes a posture of concealment and deceit in dealing with the Commission, the adverse effect on the Commission's ability to discharge its responsibilities is the same, no matter what the party's motives may have been.

106. In addition to its indefensible conclusion that there was no lack of candor, the Bureau relies on the

assertion that "Crouch and TBN are now in compliance with the multiple ownership rules . . ." Bureau Findings, para. 311. This presumably refers to the fact that, in addition to NMTV's disposition of its Odessa station, Trinity Broadcasting Network in 1991 disposed of a station in Greensboro, North Carolina, thereby reducing the combined Trinity Broadcasting Network/NMTV station ownership to 12, which would be permissible even if all 12 stations were attributed to Trinity Broadcasting Network. Bureau Findings, para. 133. The Odessa station, of course, was sold for the purpose of enabling NMTV to acquire another station in a larger market. The record does not reflect the reason for the sale of the Greensboro station. There is no evidence -- or even any claim -- that the Greensboro station was sold in order to eliminate a recognized violation of the multiple ownership rules. Rather, as noted, Trinity Broadcasting Network has never acknowledged any wrongdoing and remains wholly unrepentant. Under such circumstances, the fact that the multiple ownership violation was eliminated because of what appears to be a fortuitous coincidence cannot logically be viewed as mitigating the prior misconduct in any way, nor could it support any favorable conclusion as to the future reliability of Trinity Broadcasting Network.

107. More fundamental, however, is the fact that notwithstanding the fortuitous elimination of the multiple

ownership violation, Trinity Broadcasting Network/NMTV remain in violation of Section 310 of the Act. Thus, when the Commission gave its approval mandated by the Act to NMTV's acquisition of the Portland station, it did so based on the assumption that NMTV was controlled by its directors, not on the assumption that it was controlled by Trinity Broadcasting Network. That situation has never been cured. To adopt the Bureau's proposal would thus involve finding qualified a licensee which is in present violation of a central provision of the Act, and which has exhibited no inclination whatsoever to cure its violation. Such a result is clearly indefensible.

108. The Bureau concludes by opining that the foregoing considerations constitute an adequate assurance of Trinity Broadcasting Network's future reliability as a licensee. The basis for this conclusion is, of course, as dubious as the considerations cited by the Bureau. It is appropriate to return to this point after consideration of the adequacy of the remedy proposed by the Bureau.

2. The Proposed Sanction of Forfeitures Constitutes a
Mere Slap on the Wrist

109. The remedy proposed by the Bureau of imposing the maximum permissible forfeiture on both Trinity Broadcasting Network and NMTV would amount to nothing more than a slap on the wrist. As noted, it is far less than the indirect sanctions that fell upon a party who had assumed unauthorized

control of a licensee cited by the Commission in approving a settlement in the Cameron case. This case, of course, does not involve a settlement and its resulting benefits of resolving protracted litigation and removing wrongdoers from broadcasting, which were cited by the Commission in approving the Cameron settlement. The Commission viewed its approval of the settlement in that case as reflecting extraordinary relief arising from extraordinary circumstances. It would be anomalous indeed if Trinity Broadcasting Network were permitted to walk away with a full renewal for the relative pittance of \$500,000, especially since its conduct has exhibited an abusiveness and candorlessness not present in Cameron.

110. A further reason that forfeitures cannot be viewed as an adequate remedy arises from the source of finances relied upon by Trinity Broadcasting Network/NMTV. Thus, the Bureau cites in support of the proposed forfeiture the fact that ". . . TBN and NMTV have more than sufficient assets to pay the maximum forfeiture." Bureau Findings, para. 355. This, however, is not self-evident when one considers that the ultimate source of Trinity Broadcasting Network/NMTV's assets is contributions from members of the general public. The record suggests that some contributions are made for the specific purpose of supporting a particular program or project. Such donations would presumably not be available to

pay an FCC forfeiture. Even to the extent that donations were made generally to support "religious broadcasting", it is questionable whether the donors would have anticipated that supporting "religious broadcasting" might encompass the paying of forfeitures arising from the broadcaster's misconduct. It may be that Trinity Broadcasting Network would be able to solicit donations from persons who are fully aware that their donations would be used to pay a forfeiture. Nonetheless, it appears probable that a forfeiture imposed on Trinity Broadcasting Network/NMTV would not directly impact the actual wrongdoers in this case, but would ultimately be paid by innocent members of the public.

111. Exclusive reliance on forfeitures thus raises the real possibility that the wrongdoers would go scot-free, while remaining in control of their broadcast properties, with only the public paying for their misconduct. This would have no deterrent effect on Paul Crouch and Trinity Broadcasting Network, especially when considered in light of the International Panorama case, which also appears to have had little deterrent effect on Paul Crouch and Trinity Broadcasting Network. If the only remedy is a financial sanction that can be easily and directly passed on to the public, it is no sanction whatsoever.

3. Considerations of Deterrence Mandate TBF's Disqualification

112. As noted above, the Bureau asserts without cogent justification that the factors it cites eliminate any doubts as to the future reliability of Trinity Broadcasting Network and Paul Crouch. Bureau Findings, para. 310-11. The considerations relied upon by the Bureau are in fact without merit. Trinity Broadcasting Network and Paul Crouch attempted to deceive the Commission and have never acknowledged -- let alone attempted to rectify -- their misconduct. In the International Panorama case, Trinity Broadcasting Network and Paul Crouch narrowly avoided disqualification; however, the only lesson apparently extracted from this experience was that one could avoid disqualification by remaining ignorant of possible improprieties and by relying on counsel and employees, so that no misconduct could be directly traced to the top.

113. The Bureau notes the prior decision in International Panorama, but wholly fails to address the concern that must arise from the fact that this is Trinity Broadcasting Network's second "bite at the apple". Bureau Findings, para. 355. The Bureau appears to attribute some significance to the fact that there is no prior history of misconduct by NMTV. This is an anomalous suggestion in view of the Bureau's prior conclusion that "TBN was NMTV". Bureau

Findings, para. 302. NMTV is thus equally accountable for any past misconduct of Trinity Broadcasting Network.

114. As a result, it can only be concluded that Paul Crouch and Trinity Broadcasting Network have demonstrated their unreliability and can be afforded no further "bites at the apple". A forfeiture would doubtless be viewed as a rather modest cost of doing business that would be directly passed on to the public. The only conclusion that is warranted by the facts is that Trinity Broadcasting Network and Paul Crouch have disqualified themselves as licensees upon which the Commission can rely.

115. Moreover, the issue of deterrence cannot be viewed solely in terms of the particular parties in this case. As discussed in Section I(A)(1) above, the Commission has experienced continuing problems with abuse of its policies designed to promote minority ownership. Now, the Commission is fighting this battle anew in the context of a new service, IVDS. Order in GN Docket No. 94-96, supra. Dismissing the egregious misconduct of Paul Crouch and Trinity Broadcasting Network in this case with only a token sanction would send the wrong message to those who may be thinking of seeking an unwarranted benefit from the minority ownership policies -- "Don't worry! Even if you get caught, nothing really bad will happen to you!"

II. GLENDALE - LANCASTER/LEBANON EXTENSION APPLICATIONS ISSUE

116. Both TBF and the Bureau argue that Glendale is not qualified to become a Commission licensee because Raystay Co. (Raystay) allegedly misrepresented facts and lacked candor in a series of applications filed to extend LPTV construction permits in Lancaster, Pennsylvania and Lebanon, Pennsylvania. TBF Findings and Conclusions, Pp. 213-274, 481-500, Bureau Findings and Conclusions, Pp. 106-126, 166-176. TBF repeatedly accuses Raystay of painting a misleading picture in the extension applications. In fact, it is TBF's findings that are affirmatively misleading. There are many instances where TBF blatantly misstates the record. Glendale is not referring to instances where TBF is attempting to put a favorable "spin" on facts. It is referring to allegations or proposed findings which are directly contrary to the record evidence. Indeed, one of TBF's stratagems is to claim that the extension applications say something they do not say and then claim that the statements are misrepresentations. Another major problem with the TBF findings is that many of the findings can only be made by taking isolated portions of testimony out of context and ignoring an overwhelming mass of record evidence that undercuts Trinity's position. In order for TBF's findings to have any value or reliability, TBF was required to deal with the evidence unfavorable to its position. It did not do so, and its proposed findings are

fundamentally unreliable. The Bureau's findings also fail to take into account much of the pertinent evidence. When the record as a whole is considered, it becomes clear that the extension applications filed by Raystay were fundamentally accurate and that there is no evidence whatsoever of intent to deceive, which is an essential element of both misrepresentation and lack of candor. The issue must be resolved in Glendale's favor.

A. Drastic Misstatements by Trinity and the Bureau

117. In this section, Glendale will point out some of the more egregious misstatements contained in the TBF and Bureau documents. These blatant misstatements show that neither set of findings can be relied upon.

1. Characterization of the Agreements With Fenstermacher

118. In early May of 1991, Raystay entered into a series of agreements with Quality Family Companies, a partnership controlled by R. L. Fenstermacher. TBF Exs. 218-221. There was a separate agreement for each LPTV construction permit held by Raystay, as well as an agreement relating to Raystay's operating LPTV station, W40AF (also known as TV40). Tr. 5000. In ¶286 of its proposed findings (Pp. 218-219), TBF characterizes the agreements as follows:

The agreement with Fenstermacher relieved Raystay of both the burden of operating TV40 and the burden of constructing the five new LPTV stations. While Raystay still held the TV40 license and the construction permits, Fenstermacher took over the TV40 operations (Tr. 4998) and assumed the obligation to build and commence operating the new stations before the permits expired (TBF Exs. 218-221, p. 7, ¶¶12, 14). Under the purchase options, Fenstermacher could then buy TV40 and the new stations from Raystay after a period of time. (TBF Exs. 218-221, p. 12, ¶1; Tr. 5000.) Through that arrangement, Raystay was essentially ending its operational involvement in low power television and moving toward selling its LPTV business.

In ¶¶326-327 of its proposed conclusions (P. 169), the Bureau characterizes the Quality Family agreements as an attempt by Raystay to "unload" the construction permits.

119. These characterizations fly in the face of the plain language of the agreements. The agreements with Fenstermacher were an attempt by Raystay to develop the construction permits with it as the licensee/permittee, and it was going to have an active role in those stations. The agreements provided that Raystay was to have full authority over operation of the stations. TBF Exs. 218-221, P. 2. Raystay was to be responsible for compliance with Commission rules and policies. Id. at Pp. 2-3. Raystay retained the right to broadcast programming needed to serve the service areas and to delete any objectionable programming. Id. at P. 3. Raystay was responsible for acquiring the technical

personnel needed to maintain and to operate the station, and it was to review and approve any equipment obtained by Fenstermacher. Id. at P. 4.

120. The testimony of Lee Sandifer, Raystay's Vice President and Chief Financial Officer, also demonstrates that Raystay was going to maintain an active role in its LPTV stations under the Fenstermacher agreements. With respect to TV40, TBF conveniently ignores Mr. Sandifer's testimony that Mr. Fenstermacher was programming TV40 under Raystay's direction. Tr. 4998. George Gardner, Raystay's President (and the President and majority stockholder of Glendale), "made it clear what type of specifications" he wanted for equipment for the Lancaster and Lebanon stations. Tr. 5150.

121. While TBF refers to options to buy the permits, the agreements themselves show that Fenstermacher could not exercise such an option until, at the earliest, twelve months after he began programming. TBF Exs. 218-221, P. 12. Thus, there was clearly no intention on Raystay's part to sell the permits to Fenstermacher as soon as the stations were on the air, and there was clearly going to be a period of at least one year when Raystay was going to have an active role in operating the stations.

122. The Bureau cites the Fenstermacher agreements as evidence that "In early 1991, George Gardner virtually abandoned efforts for Raystay to construct the stations."